

**Issue Paper 6: Implementation of Restrictive Measures to Control the
Transmission of HIV, Especially Detention, is Not Effective
DRAFT**

PROBLEM STATEMENT: The 1988 AIDS Omnibus Law permits public health officers to implement increasingly restrictive measures in order to prevent transmission of HIV. When less restrictive measures, e.g. repeated counseling and issuance of an order to immediately cease and desist risky behaviors, have been exhausted and the health officer knows or has reason to believe that an individual continues to engage in behaviors that present an imminent danger to public health, the health officer may bring an action in court to detain the individual in a facility for up to 90 days. During this period, there is to be a program of counseling and education designed to get the individual to change behavior. Health officers report a number of problems with pursuing detention including the limited time in which a health officer order is effective, the lack of confidence in the efficacy of a behavioral intervention limited to a 90-day period, and the lack of an appropriate facility. As a result, an unknown number of HIV-infected individuals continue to knowingly expose others to HIV causing an increase in HIV infection and danger to the public's health. As of January 2003, no person has been detained under these provisions.

DISCUSSION: HIV infection is a life-long disease and the infected person is considered infectious throughout the remainder of his/her life. Current state law authorizes health officers to issue an order to an HIV-infected person to immediately cease and desist from conduct which endangers public health and to take certain preventive actions (for example, to use condoms) or to refrain from other actions (for example, not to share syringes). This order is only effective for three months. Thus, the HIV-infected person may believe such preventive actions are no longer necessary to stop the spread of HIV following the three-month period or, at very least, he or she is no longer "required" to take those preventive actions. In addition, the health officer is unable to take additional measures unless the infected person resides in the area where the health officer has jurisdiction and endangers the public health during the period of time the cease and desist order is in effect.

For a person to be subject to detention for endangering the public health, the person must have evidence of HIV infection, have been repeatedly counseled on actions necessary to reduce the risk of transmission of HIV, and be currently subject to a cease and desist order. An additional report of endangering the public health must be received during the period in which the cease and desist order is in effect. Rarely, is this the case. One reason is that most reports of endangering the public health are received passively – an individual exposed or otherwise with knowledge of another's HIV status and behavior – must decide to make a report to the local health officer. Thus, the health officer is unlikely to pursue detention. Evidence and experience has not shown that detention of HIV-infected persons is a useful measure.